IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.14425 of 2001

Between:

1 Mohd. Younus S/o Mohd. Ibrahim Khan,
R/o 16-2-477, Palton,
Malakpet, Hyderabad.
2 Mohd. Yakub S/o Mohd. Ibrahim,
R/o 16-2-477, Palton,
Malakpet, Hyderabad.

..... PETITIONERS

AND

1 The Commissioner of Police, Hyderabad.
2 The Assistant Commissioner of Police, Mir Chowk, Hyderabad.
3 The Station House Officer, Chaderghat Police Station, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in opening and continuing the Rowdy Sheet against the petitioners though the criminal cases were ended in clean acquittal and frequent visits made by the respondent police to the residence and place of work of the petitioners as illegal, arbitrary, against the police Standing Order No.742 and besides violative of Art.14, 19 & 21 of the Constitution of India and to consequently direct the respondents herein remove the names of the petitioners from the Rowdy Sheet on the file of the Respondent No.3 herein forthwith, and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.S.SRINIVASA SHARMA

Counsel for the Respondents: GP FOR HOME

The Court made the following:

ORDER:

The writ petition is filed seeking a Writ of Mandamus declaring the action of the third respondent in opening the rowdy sheets against the petitioners in Malakpet Police Station, Hyderabad as illegal and void.

The petitioners are doing welding work and residing at Palton, Malakpet, Hyderabad. As the petitioners were involved in two separate cases in 1992 and taking advantage of pendency of those cases for investigation, the third respondent deliberately opened rowdy sheet against the petitioners and that those cases were ended in acquittal. Except those cases, the petitioners have not involved in any criminal case. It is his case that the third respondent opened rowdy sheets without any valid reason contrary to Order 742 of A.P. Police Standing Orders.

The questions raised in this writ petition are squarely covered by the judgment of this Court in **S. Satyanarayana v. State of A.P.**. Therefore, the writ petition is disposed of directing the third respondent to consider the request of the petitioners for closing rowdy sheet following the principles laid down in **Satyanarayana**'s case (supra), which are as under.

i. A mere conviction or convictions cannot be thumb rule for opening history sheet or rowdy sheet though history sheet can be opened even without conviction for the limited purpose of watching a person discreetly.

ii. At the time of opening a history sheet or rowdy sheet a competent officer has to apply mind taking into consideration the social background the proceedings in the criminal trial if a person is convicted and all other relevant material before passing orders for opening history sheet or rowdy sheet.

iii. A history sheet/rowdy sheet is retained for the period of two years only unless it is ordered to be closed by the Superintendent of Police earlier than two years. During the initial period of two years, the history sheeter or rowdy sheeter is entitled to request the concerned police officer to close the history sheet or rowdy sheet which has to be considered by the police officer in an objective manner.

iv. While passing orders for retention of history sheet for another year more, the competent Sub-Divisional Police Officer has to take into consideration the various factors, to wit, surveillance reports, the crime history with reference to the breach of peace of society during the preceding year, the social and political background of the person etc. If there is a preponderance of opinion among the surveillance officers that the person did not come up for any adverse notice and leading a blemishless family life it is a strong circumstance to order for closure of the history sheet or rowdy sheet.

v. When an order is passed by the competent police officer for retention of the history sheet by simply endorsing on the report/letter of the S.H.O. a single line order, that by itself cannot be a ground to continue the rowdy sheet.

vi. Any order passed by the Sub-Divisional Police Officer shall have to be supported by reasons. The reasons need not be communicated but to be recorded.

vii. The orders for opening or retention of history sheet/rowdy sheet are passed under the administrative instructions/guidelines. If such an order is challenged, the competent authority has to place the reasons before the Court which justify

retention of history sheet/rowdy sheet. Further, it is always better for the Police Officer to record his own reasons for retention/opening of the history sheet/rowdy sheet.

viii. In the event as mentioned in conclusion 4.7 it is always open to the Court of judicial review to direct the Sub-Divisional Police Officer to reconsider his decision and pass appropriate orders. But whatever be the events in the guise of opening/retention of history sheet a person's liberty, right to privacy and other freedoms under Article 19 of the Constitution of India cannot be infringed under any circumstances.

ix. It is to be remembered that any order of the competent police officer which is not supported by reasons is itself unreasonable and arbitrary and can be termed as mala fide in the sense that it is contrary to the purpose for which the Police Officer is authorised under relevant Police Standing Orders. Hence, if the Court comes to the conclusion that the order of the Sub-Divisional Police Officer is contrary to the purpose for which surveillance is authorised, the action shall be set at naught forthwith on the principle that what is unreasonable and unfair is arbitrary and such arbitrary exercise of power amounts to exercising, the power mala fide.

The petitioners are, however, at liberty to approach the third respondent by filing appropriate representations for closing rowdy sheets, if the same are still continued.

The writ petition is, accordingly, disposed of. No costs

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(V.V.S.RAO, J)

28.06.2005

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To

1 The Commissioner of Police, Hyderabad.
2 The Assistant Commissioner of Police, Mir Chowk, Hyderabad.
3 The Station House Officer, Chaderghat Police Station, Hyderabad.

4 Two CCs to the Government Pleader for Home, High Court Buildings, Hyderabad. (OUT)

5 Two CD Copies.